IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 791 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHIPATBHAI KARSHANBHAI BARAD
Versus
STATE OF GUJARAT

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Appearance :
MR PARTHIV B SHAH for Appellant
MR SS PATEL APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 15/09/2006

ORAL JUDGMENT

1. This Criminal Appeal is preferred under Section 374(2) of the Criminal Procedure Code, 1973 and is directed against the judgment and order delivered on 31st March, 2003 by the Additional Sessions Judge, Fast Track Court, Rajkot in Sessions Case No.16/2002, the present appellant being accused No.1 of the said Sessions Case No.16/2002 came to be convicted by the learned Judge for the offence punishable under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment of five years and to pay fine of Rs.25,000/-, in default, to undergo rigorous imprisonment of one year. Original accused No.2 – Vinodbhai Jagjeevanbhai Herma of the said Sessions Case No.16/2002 came to be acquitted by the learned trial Judge and against that no acquittal appeal has been filed by the State. The present appeal is preferred by the original accused No.1 – present appellant against his conviction and

sentence, as aforesaid.

2. The brief facts of the case are that at about 19.00 hours on 24th July, 2002 within jurisdiction of Bhagtinagar Police Station, Rajkot near Jupiter Industry, the present appellant was found in possession of ganja to the quantity of 1 Kg. 200 Gram. This raid was carried out by the complainant PSI Shri B.F.Jadeja on information received by him. Since no pass or permit was found from the accused No.1 – present appellant, he was arrested and during investigation, it was found that this quantity of ganja was delivered by original accused No.2 to the present appellant for sale. A crime came to be registered. After investigation, charge-sheet came to be filed for the offence punishable under Sections 20(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 against the two accused including the present appellant. The charge came to be framed vide Ex.2 to which both the accused denied. The prosecution examined as many as 12

witnesses to prove its case and also submitted on record documentary evidence. The defence of both the accused were of total denial. After hearing both the parties as aforesaid, the learned trial Judge acquitted original accused No.2 of the charges, while present appellant – accused No.1 came to be convicted and sentenced as aforesaid.

3. So far as this appeal is concerned, learned advocate Mr.Parthiv Shah for the appellant and learned APP Mr.S.S.Patel were heard.

4. Learned advocate for the appellant restricted his submission to the aspect of quantum of sentence imposed. No submissions were made on the merits of the matter.

5. It was submitted by learned advocate for the appellant that firstly, the quantum of ganja found in possession of the appellant was only 200 gram higher than the small quantity of 1 kilo gram as prescribed under the said Act. It is

submitted that had it been so, the punishment would be maximum to the imprisonment of six months and to the fine of Rs.10,000/-. Only for further ganja of 200 gram, the case is governed by Clause (B) of Section 20(b)(ii). It was submitted that in the old Act before 2001, punishment for ganja was to the extent of five years. It is submitted that the submissions are not made to escape the punishment which is prescribed maximum to ten years, but an attempt is made to show circumstances for sole purpose of reduction of quantum of sentence to some extent. True it is that, technically the quantum of ganja is found is higher than the smaller quantity, but at the same time nowhere near the commercial quantity. It is further submitted that with this, it may be taken a note that the present appellant is a small vegetable vendor and poor person and that this is his first offence. The fact that the said quantity of ganja was delivered to the present appellant by the accused No.2 for sale could not be established as accused No.2 came to be convicted. It is submitted that

the present appellant is still of younger age as he must be 35 years of age as on today. It is submitted that a liberal approach in quantum of sentences may help the appellant to settle in society and to reform himself and not to indulge any time in such kind of offence. It is further submitted that right from the date of his arrest i.e. 24th July, 2002, he is in jail and out of rigorous imprisonment of five years, he has already undergone more than four years rigorous imprisonment imposed upon him, as under trial period is given to the appellant as set of by the trial Judge. It is submitted that during this period, he has not been released any time on temporary bail till the date of his conviction. It is submitted that in this view of the matter, when substance found from the appellant was ganja and when it was little over the small quantity and also having regard to the personal circumstances of the appellant, the sentence imposed upon the appellant be reduced to extent of already undergone including the default sentence in lieu of fine imposed.

6. Learned APP Mr.S.S.Patel for the respondent was also heard in respect of the quantum of punishment.

7. Before we enter into the discussion on facts in respect of the quantum of sentence, it is made clear that no submissions are made on merits of the case. Now considering overall aspects of this appeal, it must be borne in mind that the object of punishment as per the cardinal principles of penology is either deterrent or reformative or retributive. The punishment awarded to the accused serve the purpose in as much as it acts deterrent for those who have propensity to commit such offence. The reformative purpose for the betterment, may help wiping out the criminality from the accused. When society at large affected seriously retributive punishment also serve its purposes. However, while inflicting punishment, two objectives i.e. (i) punishing the criminal not to repeat the crime and (ii) attempt to

reform and to restore him to be a respectable member of the society must be taken into consideration. Having regard to the facts and circumstances, it is clear that the substance which is found from the appellant is ganja. True that the quantity which is found is higher than small quanity. However, at the same time, it must not be lost sight of that the quantity is higher to prescribed small quantity, only by 200 gram, and nowhere near the commercial quantity. The difference of punishment, for small quantity and higher than small quantity, is vast, as aforesaid. It must also be borne in mind that the appellant is of still young age. It must also be borne in mind that out of substantial sentence of imprisonment of five years on 24th July, 2006, he has already undergone imprisonment of four years. The jail remarks produced on record by the learned APP denotes that his jail conduct is good and that the appellant has not been released on temporary bail earlier at any time. The circumstances emerge from the record, lead to believe this Court that, if the sentence imposed

upon the appellant is reduced to some extent, the same would help him in reestablishing in the society and to restore a life of a respectable citizen. It is felt that by reduction of sentence to some extent, the purposes and objectives of the punishment would be fulfilled and achieved. The imprisonment which the appellant has undergone shall serve a deterrent purpose and reduction of the same may hopefully serve reformative purpose. It is felt that an opportunity to the appellant be awarded to reform himself, the substantive sentence of five years imposed upon the appellant is required to be reduced by one year i.e. to say the appellant is required to be sentenced to four years rigorous imprisonment and while not disturbing the amount of fine, the sentence imposed by the trial Court in default of payment of fine i.e. of one year is also required to be reduced to two and half months.

9. In above view of the matter, the appeal is

partly allowed and confirming and maintaining the conviction of the appellant, substantive sentence of imprisonment imposed upon the appellant by the trial Court of five years rigorous imprisonment is modified and reduced by one year rigorous imprisonment and it is directed that the appellant is sentenced to undergo four years rigorous imprisonment instead of five years rigorous imprisonment as imposed by the trial Court. It is further directed that while maintaining the amount of fine imposed by the trial Court, the sentence imposed in default of payment of fine by the trial Court to the extent of one year is modified and reduced to two and half months and, therefore, it is directed that the appellant shall undergo rigorous imprisonment of two and half months in default of fine of Rs.25,000/- instead of rigorous imprisonment of one year as imposed by the trial Court.

Remaining order of the trial Court including the order passed in respect of muddamal are not interfered with and this appeal is allowed to the extent as aforesaid. On completion of the

sentence as modified and reduced as aforesaid, the appellant shall be set at liberty by the Jail Authority if he is not required to be detained in custody for any other purpose. The office is directed to transmit the writ of this order to the Central Jail, Sabarmati, Ahmedabad, immediately.

[J. R. VORA,J.]

(vijay)